

1987

Cecil Woodard v. W. Brent Jensen; Richard Severin and Mrs. Richard Severin : Brief in Opposition to Certiorari

Utah Supreme Court

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1987 20016

IN THE SUPREME COURT OF THE STATE OF UTAH

CECIL WOODARD,

Plaintiff-Appellant,

vs

W. BRENT JENSEN,

Defendant-Respondent
and Third Party
Plaintiff-Respondent,

vs

RICHARD SEVERIN and
MRS. RICHARD SEVERIN,

Third-Party Defendants-
Respondents.

SUPREME COURT NO. 20016

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Appeal from the Judgment of the Third District Court
In and for Salt Lake County
Honorable Ernest F. Baldwin, Jr., Judge

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FILED
OCT 28 1987

IN THE SUPREME COURT OF THE STATE OF UTAH

CECIL WOODARD,)	
)	
Plaintiff-Appellant,)	
)	
vs)	
)	
W. BRENT JENSEN,)	
)	
Defendant-Respondent)	
and Third Party)	
Plaintiff-Respondent,)	
)	
vs)	SUPREME COURT NO. 20016
)	
RICHARD SEVERIN and)	
MRS. RICHARD SEVERIN,)	
)	
Third-Party Defendants-)	
Respondents.)	

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IN THE SUPREME COURT OF THE STATE OF UTAH

CECIL WOODARD,)	
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Plaintiff-Appellant,)	
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vs)	
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BRENT JENSEN,)	
)	
Defendant-Respondent)	
and Third-Party)	
Plaintiff-Respondent)	
)	
vs)	SUPREME COURT NO. 20016
)	
RICHARD SEVERIN and)	
MRS. RICHARD SEVERIN,)	
)	
Third-Party Defendants-)	
Respondents)	

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This brief in opposition to appellant's Petition for Writ of Certiorari is filed pursuant to Title VI, Rules 42 through 48 of the Utah Rules of the Supreme Court. This brief is in compliance with Rule 47. All parties are named in the caption of the case and reference to the parties will be by name.

QUESTIONS PRESENTED FOR REVIEW

Whether appellant Woodard is entitled to reform an option Agreement into a deed for conveyance of real property.

REFERENCE TO THE OPINION OF COURT OF APPEALS

The opinion of the Court of Appeals is attached to appellant's brief as Appendix "A". (Contrary to appellant's assertion that the opinion is unpublished, it was published in 62 Utah Adv. Rep., 27, August 3, 1987.)

STATEMENT OF THE CASE

In September, 1972, appellant Woodard signed a written Agreement with Brent Jensen to option five acres of mountain property in Summit County, State of Utah. The Agreement is attached hereto as Appendix "A".

The property described in the option Agreement, Exhibit "A", erroneously described a parcel of land one-half mile to the south of the property intended by Woodard and Jensen.

Woodard never exercised the option. Jensen subsequently sold the parcel to respondent Severin.

ARGUMENT

I

REFORMATION AND SPECIFIC PERFORMANCE

Plaintiff's whole case, from the beginning, has been to have the Trial Court, then the Appeals Court, and now this Court, reform an option Agreement into a deed. The two lower courts have refused to totally rewrite the Agreement between Woodard and Jensen.

The Agreement between Woodard and Jensen states in pertinent part:

A G R E E M E N T

This agreement made and entered into this 21st day of September, 1972, by and between W. BRENT JENSEN, hereinafter referred to as buyer. Now, therefore, it is hereby agreed between the parties as follows:

1. It is agreed that the seller is desirous of selling and the buyer is desirous of buying a parcel of ground more specifically described as

(A metes and bounds legal description
is written in by hand.)

The seller also agrees that this parcel of land will be a minimum of 5 acres.

2. It is understood that Lot No. 1 is in the process of being made ready for recording with Summit County, Utah **and cannot be sold at this time.** However, seller agrees that when Lot No. 1 is recorded the **buyer has first right and option to purchase Lot No. 1.**

3. **Until that time buyer agrees to buy part of Forest Meadow Ranch Plat C Lot #69, more specifically described as**

(Legal description typed in.)

hereinafter referred to as Lot No. 2. At the time Lot No. 1 is recorded the buyer will release the right and interest in Lot No. 2, **and will exercise his option on Lot No. 1.** (Emphasis added.)

The Agreement states the property "cannot be sold at this time", and that "appellant has first right and option to purchase." Though it does not so state, there can be no question the Agreement is an option. What appellant is asking for, is that this Agreement

be reformed, on the basis of a mutual mistake into a conveyance and then is asking for specific performance of that conveyance.

The mutual mistake appellant refers to is the mistake made in the legal description inserted in paragraph one of the Agreement. (See appellant's Petition for Writ of Certiorari, p. 9.) The hand written description described property one half-mile to the south of the intended property. Everyone acknowledges this mutual mistake, but correcting the legal description in the Agreement does not change the language of the Agreement. It was not intended as a conveyance at the time it was written and it cannot now be made into such.

Appellant can cite no case law supporting such a reformation. The cases appellant cites support the proposition that a contract will be reformed to express the intent of the parties where there has been a mutual mistake. In this case, that would be to the reformation of the legal description only.

II

APPELLANT'S ISSUE OF THE COURT'S FAILURE TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW ON ALL MATERIAL ISSUES

The basis of appellant's appeal to the Supreme Court, which is being reasserted in its Petition for Writ of Certiorari, is that the Trial Court failed to make Findings of Fact and Conclusions of Law as to: (a) mutual mistake; (b) intent of the

parties to the Agreement; (c) who had possession of the property; (d) whether Severins had actual notice; and, (e) estoppel by the Severins and Jensen to attack Woodard's Agreement.

The reason the Trial Court made no Findings of Fact or Conclusions of Law as to these issues is because they are immaterial. The Trial Court never had to deal with the mutual mistake issue, because the option Agreement is not a deed, it does not convey property, and the Court cannot award specific performance on the Agreement. The other issues are of a like nature: Once it is determined that the Agreement does not convey property, the issues which appellant thinks are so material, become irrelevant. The plain and simple fact is: Woodard never had the property conveyed to him and it was never the intent of the parties that the property be conveyed by the terms of the Agreement. Therefore the other issues become of no concern.

III

APPELLANT'S REMEDY IS DAMAGES

The appellant paid money to Jensen for an option Agreement which was subsequently to be applied towards the payment of the property. Appellant never got the property. The property was subsequently conveyed to Severin. Appellant's remedy is not specific performance for what he wished might have happened, but damages. And the Trial Court awarded appellant damages.

IV

RULE 43. CONSIDERATIONS GOVERNING REVIEW OF CERTIORARI

Rule 43 of the Rules of the Utah Supreme Court states:

Review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor wholly measuring the Court's discretion, indicate the character of reasons that will be considered:

- (1) When a panel of the Court of Appeals has rendered a decision in conflict with a decision of another panel of the Court of Appeals on the same issue of law;
- (2) When a panel of the Court of Appeals has decided a question of state or federal law in a way that is in conflict with a decision of this Court;
- (3) When a panel of the Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision; or
- (4) When the Court of Appeals has decided an important question of municipal, state, or federal law which has not been, but should be, settled by this Court.

Appellant can cite no case which would indicate that the Court of Appeals has rendered a decision in conflict with the decision of this Court, another opinion of the Court of Appeals, or state or federal law. Only by fuzzing the issue of mutual mistake can appellant even hope to catapult this case into an appeal or Petition for Certiorari.

There is no case in conflict. The cases appellant cites hold that where there is mutual mistake which does not conform to the intent of the parties, an Agreement can be reformed.

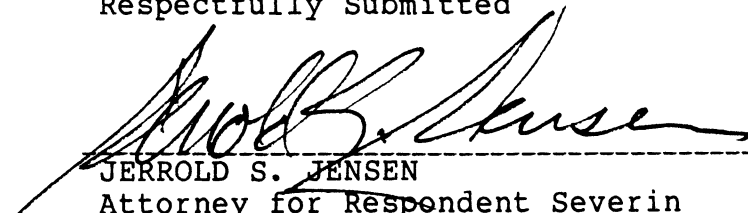
That is not the case here. The only thing that can be reformed here is a correcting of the legal description to accurately describe the property intended by the parties. Even then such a correction does give Appellant title to the property.

CONCLUSION

Appellant has attempted on two prior occasions with the Trial Court and the Court of Appeals to muster past the Court's attention an issue of mutual mistake as to a legal description for real property, and claim the mistake is the basis for transforming that Agreement into something else. The Trial Court was not hoodwinked, and the Appeals Court was not.

The meaning of the 1972 Agreement and the intent of the parties at the time does not change by merely correcting a legal description. Only by fuzzing the issue on mutual mistake, can appellant claim an inconsistency between the Court of Appeals' decision and any other decisions of this Court or state or federal law. When it appears what mutual mistake appellant is attempting to claim, it is evident that there are no decisions in conflict with the decision of the Appeals Court, and plaintiff's Petition for a Writ of Certiorari should be denied.

Respectfully Submitted


JERROLD S. JENSEN
Attorney for Respondent Severin

MAILING CERTIFICATE

I HEREBY CERTIFY that I mailed four true and correct copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the following named people this 28th day of October, 1987, postage prepaid:

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Salt Lake City, Utah 84110-3400
Attorneys for Plaintiff-Appellant

Mr. W. Brent Jensen
983 Third Avenue
Salt Lake City, Utah
Defendant and Third Party Plaintiff


Cathy Hatcher

APPENDIX A
AGREEMENT

A G R E E M E N T

This agreement made and entered into this 21st day of September, 1972, by and between W. BRENT JENSEN, hereinafter referred to as Seller and CECIL WOODARD, hereinafter referred to as buyer. Now, therefore, it is hereby agreed between the parties as follows:

1. It is agreed that the seller is desirous of selling and the buyer is desirous of buying a parcel of ground more specifically described as *Beginning, N. 670 ft., 520 ft. E. from S.W. Cor Sec 28 AND RUNNING THENCE; N. 61° 30' E, 670 ft; N 34° 20' W 665 ft, 561° 30' W, 330 ft, S 76° 30' E 170 ft; So. 46° 40' E, 60 ft; South, 60 ft; S. 180° 40' W, 130 ft. more or less* The seller also agrees that this parcel of land will be a minimum of 5 acres.

2. It is understood that Lot No. 1 is in the process of being made ready for recording with Summit County, Utah and cannot be sold at this time. However, seller agrees that when Lot No. 1 is recorded the buyer has first right and option to purchase Lot No. 1.

3. Until that time buyer agrees to buy part of Forest Meadow Ranch Plat C Lot #69, more specifically described as beginning at a point 1520 ft. N, 312 ft. E. from N.W. Cor. Sec. 27, T1N, R4E, S1B&M and running thence: N31°42'41" E. 144.59 ft.; N 83° 43'44" E., 183.10 ft.; N. 09° 27' 44" W., 60.83 ft.; N. 73° 28' 27" E, 94.92 ft; South 320 ft., to point of beginning, hereinafter referred to as Lot No. 2. At the time Lot No. 1 is recorded the buyer will release the right and interest in Lot No. 2, and will exercise his option on Lot No. 1.

4. The seller agrees to provide cullinary water to Lot No. 1 through a central water system.

5. The seller warrants to the buyer that a properly installed septic tank system will meet all county and state requirements for sewage disposal and no assessment will be made for a sewage hook-up.

6. Terms of the sale. The buyer agrees to pay \$7,000.00 in cash and 8,000 shares of Adax Energy Corporation stock hereinafter referred to as the Stock. The seller acknowledges the stock is investment stock and at the present time is not tradable. The seller agrees that the stock will be held in escrow in the sellers name at the main office of Walker Bank & Trust.

Salt Lake City, Utah until said stock becomes free trading. The buyer guarantees to the seller that the stock will have a market value of \$1 per share on or before October 1, 1974, and that the seller will be able to sell through a broker the stock for \$1 a share. The buyer retains an option to purchase back the said stock for \$1 per share on or before October 1, 1974.

7. The seller hereby agrees to furnish to the buyer Title Insurance ^{WARRANTY DEED} to the property no later than October 1, 1974

Seller W. Brent Jensen
W. Brent Jensen
Buyer Cecil Woodard
Cecil Woodard

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Beginning at a point North, 680 ft. and East, 620 ft. from the S.W. corner sec. 28, T1N, R4E, S1B&M and running hence N 61° 30' E, 670 ft.; N 38° 08' W, 330 ft.; S. 61° 20' W, 665 ft.; S 76° 30' E, 170 ft.; S 46° 40' E, 60 ft.; South, 60 ft.; S 18° 30' W, 130 ft. to the point of beginning.

Seller W. Brent Jensen
W. Brent Jensen
Buyer Cecil Woodard
Cecil Woodard

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